IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7130 OF 2005

Madhumati w/o Manoj Kheradkar.. .... Petitioner.
Versus
I B P Co. Limited & Others..... ... Respondents.

Mr. A. S. Khot i/by M/s. Jay & Co. & Anand Chawre for the Petitioner.

Mr. G. R. Agrawal for Respondent No.1.

Mr. N. D. Sharma for Respondent No.2.

CORAM : R. M. LODHA &
NARESH H. PATIL, JJ.

DATED : 7TH AUGUST, 2006.

P.C. :

The petitioner is aggrieved by the communication dated 14th December, 2004 whereby the first respondent withdrew the letter of appointment (Award of Retail Outlet Dealership), for short "LOA", dated 24th January, 2003. The petitioner seems to be a woman entrepreneur. Her husband Manoj Kheradkar has been awarded two dealerships in petroleum products at Sangli. It is the petitioner’s case that as the award of dealership in petroleum products underwent drastic changes, as the woman entrepreneur, she decided to enter into the petroleum business by obtaining a dealership / Retail

Outlet. She purchased agricultural land at Jath, Taluka Jath, District Sangli in the year 2000 and negotiated with first respondent for allotment of retail outlet. Pursuant to the decision taken by first respondent to allot retail outlet to the petitioner, the first respondent applied to the District Magistrate, Sangli on 29th December, 2000 for his no objection to the proposed Petroleum Retail Outlet to be developed, erected and commissioned on the land owned by the petitioner. The petitioner also applied to the Collector, Sangli for grant of non-agricultural permission for commercial purpose (petroleum and diesel pump) and requisite permission was granted for use of the said agricultural land for non-agricultural purposes on 22nd April, 2002. The petitioner also claims to have applied to the Maharashtra State Electricity Board for power supply at 440 Volts and paid requisite installation charges to the Electricity Board. According to the petitioner, the first respondent communicated to the petitioner on 21st March, 2003 that in principle it has been agreed to take petitioner's land on lease for a period of 29 years on the terms and conditions set out therein. Then on 24th January, 2003 the first respondent communicated to the petitioner that the said respondent has agreed to grant dealership / licence to the petitioner as vendor of Company's products, namely, MS/HSD subject to terms and

conditions contained in the standard form of licence agreement. Pursuant to the said communication dated 24th January, 2003, the petitioner deposited a sum of Rs.1,50,000/- as security deposit and also signed the LOA. It is the petitioner's case that immediately thereafter the first respondent issued work order in favour of M/s. Osho Construction of Mumbai and petitioner was also given Customer Code number. It is the case of the petitioner that as an outcome of work order issued in favour of the construction company as well as the positive steps taken by the petitioner and acting upon the assurances given by the first respondent, installation and erection of retail outlet has progressed; tanks with connection to pumps had been brought to site and various other formalities were completed. The petitioner claims to have incurred expenditure to the tune of few lacs of rupees during this time. However, when first respondent did not speed up the commissioning of the retail outlet and put the project on hold, the petitioner made representations after representations. Ultimately, on 14th December, 2004, the petitioner was informed that LOA dated 24th January, 2003 has been withdrawn and cannot be allotted in view of the changed policy which provided that "Only one dealership on oil industry basis will be allowed to a family unit consisting of the individual concerned,

his / her spouse and unmarried sons / daughters"; the petitioner's husband having been already provided with two dealerships.

2. Mr. A. S. Khot, Counsel for the petitioner, submitted that the policy that "Only one dealership on Oil Industry basis will be allowed to a family unit consisting of the individual concerned, his / her spouse and unmarried sons/daughters" became effective from 19th September, 2003 and the same being prospective cannot affect the LOA dated 24th January, 2003. He also submitted that the petitioner acted on the assurances and promises made by first respondent, incurred expenditure to the tune of few lakhs and also took positive steps in installation and erection of retail outlet and, thus, first respondent is estopped by principles of promissory estopple in revoking LOA dated 24th January, 2003. In this connection, Counsel for the petitioner, referred to and relied upon the judgment of the Supreme Court in the case of **Union of India and others v/s Godfrey Philips India Limited,** 1985 (4) SCC 369.

3. The documents that have been placed on record do indicate that the first respondent wrote to the District Magistrate in the year 2000 that they propose to develop

one MS/HSD retail outlet at Survey No.322/A/1, Jath, Tal. Jath, Dist. Sangli belonging to the petitioner and sought no objection from the said authority to the proposed petroleum class ‘A/B’ Retail Outlet. Pursuant thereto the no objection certificate was granted by the District Magistrate. The petitioner also made application for grant of non-agricultural permission for commercial purpose (Petrol and Diesel pump) in respect of the said land and the Sub Divisional Officer granted the said permission on 31st December, 2001. It also appears that the petitioner made an application to the Maharashtra State Electricity Board, Sangli on 7th January, 2003 seeking sanction of fresh power supply at 440 volts for the purpose of petroleum retail outlet at the aforesaid land. That the Pune Divisional Office of the first respondent communicated to the petitioner on 21st January, 2003 that the Competent Authority has granted in principle approval for taking the land (Survey No.322/A/1 at Village Jath belonging to the petitioner on lease is apparent from Exhibit "E" annexed to the petition. The terms and conditions on which the lease was to be taken have been mentioned in the said letter. Clause 15 thereof, which is very relevant reads thus:

"Your application or that of your nominee for Retail

> Outlet Dealership, will be considered in line with Company's policy and fulfilling the eligibility criteria as per Company policy"

Then on 24th January, 2003, the Pune Divisional Officer of the first respondent communicated to the petitioner that the first respondent agreed to grant dealership to the petitioner as a vendor of Company's products on the terms and conditions incorporated therein. Inter alia clause 13 thereof provided that since the first respondent (IBP Company Limited) is a group company of M/s. Indian Oil Corporation Limited, IBP is required to abide by all the instructions, guidelines and policies declared by Government from time to time, and the petitioner would also be bound by all such directions and actions in pursuant to those directions. Thereafter, by communication dated 14th December, 2004 the petitioner was intimated that as per Government directions new dealership policy has been put into effect on Industry basis as applicable to IBP with effect from 19th September, 2003 which provided that "Only one dealership on Oil Industry basis will be allowed to a family unit consisting of the individual concerned, his / her spouse and unmarried sons / daughters". In her application dated 15th December, 2002, the petitioner has mentioned that her husband is

an existing retail outlet dealer of the first respondent at District Sangli and is also a LPG dealer of HPCL. The petitioner does not meet Multiple Dealership norms and accordingly the LOA dated 24th January, 2003 is withdrawn.

4. The question that arises for our consideration is whether the withdrawal of LOA by communication dated 14th December, 2004 issued to the petitioner on 24th January, 2003 suffers from any legal infirmity warranting interference in extra ordinary jurisdiction.

5. As already noticed above, various steps were taken by the petitioner as well as the first respondent for installation of retail outlet at the aforementioned land owned by the petitioner and even LOA was issued by the first respondent to the petitioner in that connection. However, it is a fact that the said retail outlet had not been fully developed and was not commissioned before 14th December, 2004 when LOA dated 24th January, 2003 came to be withdrawn. In other words LOA that was issued by the first respondent to the petitioner was not consummated by commission of the retail outlet before the change of the Industry Policy which came into effect from 19th September, 2003 that "Only one dealership on Oil Industry basis will be allowed to a family unit

consisting of the individual concerned, his / her spouse and unmarried sons / daughters". That the petitioner's husband is an existing retail outlet dealer of the first respondent at District Sangli and is carrying on business in the name of M/s.Virupakshalinga is not in dispute. It is also not in dispute that the petitioner's husband is a LPG Dealer of HPCL and carrying on business in the name of M/s. Kheradkar Gas Agency at District Sangli. Rather these facts are mentioned by the petitioner herself in retail outlet dealership application dated 25th April, 2002. Thus when the new dealer selection policy came into effect in September, 2003, the petitioner was rendered ineligible for award of retail outlet dealership. In the communication dated 21st January, 2003 sent by first respondent to the petitioner intimating to her that first respondent is in principle agreeable to grant approval for taking land on lease, it is clearly mentioned that her application will be considered in the line with company's policy and fulfilling the eligibility criteria as per Company's policy. Even in LOA dated 24th January, 2003, particularly paragraph 13 thereof, it is clearly mentioned that first respondent is a Group Company of M/s. Indian Oil Corporation Limited and IBP is required to abide by all the instructions and policies and guidelines declared by the

Government from time to time and the petitioner would also be liable to be bound by all such directions and actions in pursuant to those directions. These terms and conditions mentioned in the communication dated 21st January, 2003 as well as letter of appointment dated 14th January, 2003 were duly accepted by the petitioner. The petitioner, therefore, is bound by the changed policy which makes petitioner ineligible to the grant of retail outlet dealership, since her husband is an existing retail outlet dealer in the same District from the first respondent and is also LPG dealer of HPCL in the same District. Thus, there is no merit in the contention of the Counsel for the petitioner that the new dealer selection policy is not applicable to the petitioner.

6. We also find no merit in the submission of the Counsel for the petitioner that the first respondent is estopped by the principle of promissory estopple in withdrawal of LOA. As already indicated above, the petitioner had accepted while accepting the LOA dated 24th January, 2003 that she will be bound by the policy, instructions, guidelines, etc. that may be declared by the Government from time to time. Before LOA got consummated and retail outlet could be developed, there was already change in policy which was binding on the

petitioner and, therefore, principle of promissory estopple is not applicable to the case of the present facts. Judgment of the Supreme Court in the case of Godfrey Philips India Ltd. (Supra) relied upon by the Counsel for the petitioner has no application.

7. Writ petition does not deserve to be admitted.

8. Dismissed in limine.

9. However, it is clarified that dismissal of the writ petition shall not preclude the petitioner from pursuing her remedy of claim of damages, if any, in appropriate forum.

Sd/-

(R. M. LODHA, J.)

Sd/-

(NARESH H. PATIL, J.)